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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

12 CR 615 (JPO)

5 AMIR ABBAS TAMIMI,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 October 25, 2013  
10:45 a.m.

10 Before:

11 HON. J. PAUL OETKEN,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
17 Southern District of New York

JASON P.W. HALPERIN

17 ANDREA L. SURRATT

18 Assistant United States Attorneys

19 SAEID B. AMINI

Attorney for Defendant

20 ALSO PRESENT: Shirazi Namad, Interpreter (Farsi)

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(Case called)

MR. HALPERIN: Good morning, your Honor. Jason Halperin and Andrea Surratt, for the government, and with us at counsel table are Thomas Smith of the Department of Commerce, Matthew Fede of the Homeland Security Investigation and Michael Dabbo of the F.B.I.

THE COURT: Good morning.

MR. AMINI: Good morning, your Honor. Saeid Amini, for the defendant, Amir Abbas Tamimi.

THE COURT: Good morning.

MR. AMINI: Your Honor, I didn't have an opportunity to talk to him. I don't know if I can have five minutes. He just walked in. I came early this morning to see him. He wasn't brought in. I didn't have an opportunity to talk to him. He wanted to make a statement. I wanted to go over his statement. I don't know if I could have like a couple minutes with him because of the translation of his statement. I want to make sure the translator is also having a copy of what he wants to say so there's no misunderstanding.

THE COURT: You need about five minutes?

MR. AMINI: Five minutes, I would appreciate it, your Honor.

THE COURT: Okay. Sure.

(Recess)

THE COURT: We're scheduled for sentencing in this

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1 case, and there are a number of submissions. I want to start  
2 by just making sure I've received everything I should have. In  
3 preparation for today, I've reviewed the presentence report  
4 with an addendum and recommendation by the probation  
5 department, submission by defense counsel, Mr. Amini, dated  
6 September 29, submission by the government, dated October 18, a  
7 further submission by the defendant, dated October 23, and the  
8 government's surreply, dated October 24, and there are various  
9 attachments to several of those.

10 Do I have everything I should have?

11 MR. HALPERIN: From the government, yes, your Honor.

12 MR. AMINI: Yes, your Honor. Just that last  
13 submission by the government, I did not get an opportunity to  
14 reply. I'm just going to make an oral argument.

15 THE COURT: Okay. Mr. Amini, have you read the  
16 presentence report and discussed it with your client?

17 MR. AMINI: Yes, your Honor.

18 THE COURT: Mr. Tamimi, have you read the presentence  
19 report and discussed it with your attorney?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Halperin, have you reviewed the  
22 presentence report?

23 MR. HALPERIN: We have, your Honor.

24 THE COURT: Are there any objections to the  
25 presentence report?

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1 MR. AMINI: Your Honor, our objection is to the base  
2 offense level of 26. We believe it is 14 and we argued for  
3 that, and anything related to the base offense level, we  
4 object.

5 THE COURT: Right.

6 MR. AMINI: Other than that, we have no objection,  
7 your Honor.

8 THE COURT: We need to swear the interpreter.

9 (Interpreter sworn)

10 MR. HALPERIN: Your Honor, the government has no  
11 objections to the PSR.

12 THE COURT: So the objection with respect to the base  
13 offense level, you argue should be 14 instead of 26, is that  
14 right?

15 MR. AMINI: Yes, your Honor.

16 THE COURT: And this was an argument that you  
17 preserved, I think, in the plea agreement. I'm going to start  
18 with the guideline calculation, and then I'm going to give each  
19 party a chance to speak. I'll tell you now I haven't decided  
20 whether to go forward with sentencing today because I think  
21 there's a disputed factual issue. It doesn't, I don't think,  
22 go to the guideline calculation but goes to the appropriate  
23 sentence, and I think the culpability of the defendant under  
24 the factors under 18 U.S.C. 3553(a), and that disputed factual  
25 issue is what was the defendant involved in this exportation of

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1 helicopter parts for. Was it for the Red Crescent, as he has  
2 said under oath, or was it for an entity associated with the  
3 Iranian military, which is what the government says he  
4 admitted.

5 As I say, I don't think the guideline calculation  
6 changes based on a determination between the two versions of  
7 events, but I think it matters to me in what an appropriate  
8 sentence would be considering all of the factors under the  
9 statute. I'm considering holding an evidentiary hearing on  
10 that issue, a Fatico hearing, and we could do it today if  
11 people are prepared, but I didn't give any notice of this, so I  
12 would be prepared to adjourn the sentencing to a later point  
13 when we can schedule an evidentiary hearing and people can  
14 prepare for that.

15 In any event, having said that, I want to start with  
16 the guideline calculation and then give the parties an  
17 opportunity to address anything relating to sentencing,  
18 including the issue I've raised about the motivation and  
19 purpose behind the defendant's conduct. The starting point in  
20 determining sentence is the guidelines, which is a recommended  
21 or advisory starting point for any sentencing based on the base  
22 offense level of various categories of offenses and then the  
23 criminal history category of the defendant. The Court is no  
24 longer required to follow the Sentencing Guidelines, but I am  
25 still required to consider the applicable guidelines before

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1 imposing sentence, and it is the lodestar, or the lodestone, in  
2 any sentencing decision. So it is the starting point, and I'm  
3 going to start by going through the guideline calculation.

4 In this case, there was a plea agreement in which the  
5 parties stipulated to a guideline calculation subject to  
6 defendant's right to argue that the base offense level is 14  
7 instead of 26.

8 Other than that, are there any other issues regarding  
9 the accuracy of the guideline calculation in the presentence  
10 report?

11 MR. HALPERIN: Not from the government, your Honor.

12 MR. AMINI: No, your Honor.

13 THE COURT: Based on the absence of objection and my  
14 own independent calculation of the guidelines, I accept the  
15 guideline calculation in the presentence report. On the  
16 disputed issue, I do conclude that the base offense level is 26  
17 under the guidelines. I've used the sentencing guideline  
18 manual effective November 1, 2012. I find under 2M5.1 of the  
19 guidelines the base offense level is 26. 26 applies where  
20 national security controls were evaded. Several courts have  
21 held that this provision applies if the embargo or sanction was  
22 adopted for national security purposes and irrespective of  
23 whether the particular item itself presents a national security  
24 issue. I believe here, it probably does present a national  
25 security issue, but even if it doesn't, the controls at issue

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1 clearly are national security controls. IEEPA and the  
2 particular provisions at issue here were clearly adopted for  
3 national security purposes, and I conclude that they were,  
4 therefore, national security controls for purposes of 2M5.1.

5 The defendant is entitled to a three-point reduction  
6 for acceptance of responsibility. At least that's my initial  
7 conclusion subject to further evidence, if I decide to have an  
8 evidentiary hearing. That would mean the total offense level  
9 is 23, the criminal history category I, because there are no  
10 known prior offenses, and that yields a guideline range of 46  
11 to 57 months.

12 I now would like to give defense counsel, Mr. Amini,  
13 an opportunity to speak on behalf of defendant, if you wish to  
14 say anything.

15 MR. AMINI: Your Honor, this is a regulatory  
16 violation. It is not in any way a violent crime. That's No.  
17 1. And then also, the government never made any allegation on  
18 the scale or the amount of the alleged transaction.

19 THE COURT: On the what?

20 MR. AMINI: Alleged transaction. The amount and the  
21 quantity and the quality of it, it's just a blanket saying  
22 there was helicopter parts. There's no list of helicopter  
23 parts they are talking about and how much the transaction  
24 really amounted to.

25 THE COURT: You mean how much money is involved?

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1 MR. AMINI: Right, and I believe that, your Honor, is  
2 very important for sentencing purposes. And there are big  
3 sentences the courts have given if this was involving large  
4 transactions and actually an export was made. In this case, no  
5 export was made. It was just an attempt. This defendant was  
6 arrested upon his arrival.

7 THE COURT: Right. You keep calling it an attempt,  
8 but it's a conspiracy. I mean, he pleaded guilty to  
9 conspiracy, I think. Right?

10 MR. HALPERIN: Correct.

11 MR. AMINI: The conspiracy was an attempt to.

12 THE COURT: Conspiracy to attempt?

13 MR. AMINI: Attempt to purchase, not export.

14 Your Honor, we are separating the line, attempt to  
15 actually make the shipment, there's an attempt to actually, to  
16 purchase. This item was never purchased. This attempt is  
17 before any shipment. There's no shipment arrangement that has  
18 been made. There's no money transaction that has been made in  
19 this case, and I believe that is actually important for purpose  
20 of 31 C.F.R. 560.203 and 204, which are advisory. Being a  
21 non-U.S. person, attempt really, attempt to purchase something  
22 as a non-U.S. person doesn't apply. 31 C.F.R. 560.204 applies  
23 to a foreign person, but it requires actually shipment.

24 THE COURT: But he pleaded guilty to conspiracy to  
25 violate IEEPA; in other words, agreeing with other people to



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1 engage in this exportation of goods via Korea to Iran  
2 unlawfully. So whether the transaction was completed or not  
3 doesn't matter. That's how conspiracy works.

4 MR. HALPERIN: Exactly.

5 THE COURT: I don't understand this argument that the  
6 statute doesn't apply. The statute criminalizes conspiracy to  
7 violate IEEPA. That's agreeing with others to engage in the  
8 exportation.

9 MR. AMINI: But, your Honor, the level of the  
10 violation, just to conspire to do something, that conspire  
11 actually has something done. I conspire and then I make  
12 arrangement and then I do it. That is different from I  
13 conspire but nothing happens. That is what I'm trying to say.  
14 In this case, nothing happened. No purchase was made. No  
15 payment was made. The conspiracy died at infancy, while in  
16 gestation.

17 THE COURT: That happens in every conspiracy case  
18 where the government stops it from being completed.

19 MR. AMINI: I believe the courts have looked at this  
20 differently when it comes to sentence when actually the  
21 shipment was made, was conspired and the shipment was made.

22 THE COURT: Okay.

23 MR. AMINI: And the cases really did not even go any  
24 farther.

25 THE COURT: I understand. Anything else that you

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1 wanted to add? I've read all your submissions. Is there  
2 anything else you would like to add?

3 MR. AMINI: The government is alleging many things  
4 which is not in the four corners of the indictment. We don't  
5 have any documentation or any affidavit from anyone and they  
6 just make a statement and I would like the Court to order that  
7 such an allegation that my client made an admission, those  
8 should be produced with the transcript before the next hearing.

9 MR. HALPERIN: Judge, I'm not clear on what counsel's  
10 talking about because everything we have put into our  
11 sentencing submission was produced in the voluminous discovery  
12 produced to defendant and defense counsel, as were his  
13 postarrest proffer 302s, which contain many of the admissions  
14 that we cite in our sentencing submission. So I'm just not  
15 clear as to what defense counsel is referring to.

16 THE COURT: You have the discovery he's referring to,  
17 right?

18 MR. AMINI: Right, but I haven't seen what they  
19 actually made these allegation sentencing report.  
20 Specifically, the defendant admitting these are for military.

21 THE COURT: Admitting what?

22 MR. AMINI: This is for military, for the Iranian  
23 military.

24 THE COURT: If you're done with your statement, I'll  
25 let Mr. Tamimi make his statement, if he'd like.

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1 MR. AMINI: Sure.

2 THE COURT: Mr. Tamimi, if there's anything you would  
3 like to say, you're welcome to do so now.

4 THE DEFENDANT: Your Honor, greetings. As you are  
5 informed, I was arrested on October 5, 2012, on IEEPA charges.

6 As you're aware, I was arrested on October 5, 2012, on  
7 IEEPA charges. As the law explicitly indicates that it is for  
8 the people who are U.S. persons, people who are residents of  
9 the United States or have residency in the United States. I've  
10 never been a resident in this country and I've never committed  
11 any crime either in this country or my own country.

12 Your Honor, Mr. Prosecutor unfortunately repeats the  
13 same thing over and over several times and the repeated  
14 contacts by Mr. Ghojolo from the United States with me causes  
15 that a negative mentality in you and whoever presents to them.  
16 Your Honor, I have question for you. I was not in contact with  
17 this gentleman for several years. Who was it who contacted me  
18 for the first time? And who was the person who initiated this  
19 transaction and who created this entrapment for me?

20 THE INTERPRETER: I'm sorry, your Honor.

21 (Interpreter conferred with defendant)

22 THE DEFENDANT: Who was the person who contacted the  
23 government agents who insisted, who insisted to me and who  
24 intended to sell these spare parts. Your Honor, I did not even  
25 have his contact number so that I would even call him.

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1 Generally, everybody in the world, there are two sides to a  
2 transaction, have the basic information about each other, like  
3 the contact telephone number, fax. He called me every day, but  
4 I can't obtain his equipment.

5 Your Honor, the prosecutor states that the company in  
6 Iran wanted this equipment for military purposes. Please note  
7 a few things. First of all, since 1973 up to now, none of the  
8 Bell helicopters of any kind were sold to Iran. And it's close  
9 to 40 years that no transactions have taken place. And it's  
10 obvious that the equipment of the helicopters from 40 years ago  
11 cannot be up to date and with the best technology, and by  
12 referring to the manufacturing shows that all of them were  
13 obsolete. The Iranian Red Crescent in Iran, as a part owner of  
14 some of this equipment, lacks any repair or facility for  
15 technical repairs, and, therefore, it has to contact the said  
16 company Panha, the only exclusive agent for procurement and  
17 providing of technical services for the helicopter. And this  
18 company acts for the technical inspection and gives a list of  
19 the equipment necessary for the repair to the owner. If you  
20 refer to the list that I requested from Mr. Ghojolo, and that  
21 list was only about the motor part of the helicopter and it  
22 included screws, bolts, and washers and did not have any  
23 special military application.

24 Your Honor, my father, because of my mother's passing  
25 away and brain illness, is under my care, and because he cannot

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1 move he is highly dependent on me. And also my wife because of  
2 the cancerous illness of breast and --

3 THE INTERPRETER: Sorry, your Honor.

4 (Interpreter conferred with defendant)

5 THE INTERPRETER: Sorry.

6 THE DEFENDANT: -- history, has had several surgeries  
7 and also needs an urgent surgery again. And also my only  
8 daughter, who is 11 years old, is highly dependent on me.

9 Your Honor, I hope that this sentencing is close to 14  
10 months, be a good punitive measure for me, and I sincerely  
11 apologize to the United States Government for this incident and  
12 for what happened. And I hope that by pardoning me you make my  
13 family happy. And I thank you for the opportunity you gave me.

14 THE COURT: Thank you. You may be seated.

15 Again, I've received your submission, Mr. Halperin,  
16 but if there's anything you would like to say on behalf of the  
17 government, you may.

18 MR. HALPERIN: A few words. Thank you, your Honor.

19 Your Honor, let me address the Court's initial inquiry  
20 first about the need for Fatico. We respectfully submit that  
21 we don't need a Fatico to resolve the facts because the  
22 government has proffered as part of its sentencing submission  
23 and as part of the facts in the case, we've included Exhibit A,  
24 telephone conversation in which Mr. Tamimi admitted that the  
25 merchandise was being acquired or attempted to be acquired for

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1 military purposes. He's also not challenged the government's  
2 representations in his postarrest interviews that he made  
3 admissions it was for officials connected with the Iranian Air  
4 Force. So I do think the Court has a factual basis to find by  
5 a preponderance of the evidence that these goods were being  
6 procured by Tamimi for the Iranian Air Force.

7 THE COURT: Was there anything in the postarrest  
8 statements or any of the e-mails or any of the other documents  
9 referring to Red Crescent?

10 MR. HALPERIN: No.

11 THE COURT: Your view is that's just a made-up story?

12 MR. HALPERIN: I view that as completely made up to  
13 try to get leniency from this Court and that when he said that  
14 today and at the plea hearing that was completely false and  
15 completely contrary to everything he had said both during the  
16 course of the investigation when we had those recorded  
17 conversations, as set forth in Exhibit A, and over the course  
18 of four days of the postarrest interviews last October where he  
19 never mentioned the Iranian Red Crescent.

20 With the Court's permission, I'll proceed to make a  
21 few points related to sentencing.

22 THE COURT: Let me first ask. Did you consider moving  
23 for or asking for an obstruction of justice increase? He said  
24 that under oath in his plea allocution.

25 MR. HALPERIN: Your Honor, we had a plea agreement at

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1 the time of the plea, and, at the plea, the falsity of that had  
2 not yet been clear to the government. That was the first time  
3 we ever heard it mentioned; it was at the actual plea  
4 allocution, and, as we said in our surreply, we were focused on  
5 the plea allocution, making sure he acknowledged all the  
6 elements of the offense, and we thought we would address this  
7 at the sentencing. So the first time we ever heard the  
8 supposed Red Crescent excuse was on July 10, at the July 10  
9 plea allocution. And then between that date and today, we have  
10 had several meetings with the agents where they have  
11 underscored for us the falsity of those statements that  
12 Mr. Tamimi made at the allocution.

13 So we did not think it was, very fairly we could have  
14 probably sought a denial of acceptance of responsibility points  
15 and/or obstruction, but we have a plea agreement, and in this  
16 case we decided to stand by our plea agreement but vigorously  
17 ask for a guidelines range sentence. We thought that was the  
18 appropriate way to handle it.

19 THE COURT: If there were a Fatico hearing on this  
20 issue of was it for someone connected to the  
21 military/contracted for the military versus this Red Crescent  
22 organization, I've seen your submission where you attach --

23 MR. HALPERIN: Exhibit A.

24 THE COURT: You have an e-mail, you have a summary of  
25 the call. Are there actual transcripts of calls or recordings?

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1 MR. HALPERIN: We could certainly have a transcript  
2 made. I think this is a summary of a recorded telephone  
3 conversation, so a Fatico would simply consist of us either  
4 having an official transcript made by an F.B.I. Farsi-speaking  
5 translator and/or if the Court wanted to hear the initial  
6 recording, which I believe is in Farsi, the agents are nodding  
7 yes, we could play that. And then the only other thing that a  
8 Fatico might entail is we could put one of the F.B.I. agents  
9 who handled the postarrest interviews on the stand where  
10 Mr. Tamimi acknowledged that it was for this official connected  
11 with the Iranian Red Crescent -- excuse me, with the Iranian  
12 Air Force.

13 THE COURT: Are there F.B.I. 302 reports?

14 MR. HALPERIN: There are, which have been produced in  
15 discovery, and we're happy to provide those to the Court.

16 THE COURT: What do they say?

17 MR. HALPERIN: They say essentially that, Judge, if  
18 you can give me a moment to get as precise a rendering as  
19 possible for the Court. Ms. Surratt points to tape seven. And  
20 in paragraph eight on page eight, which is the section talking  
21 about Mr. Tamimi's postarrest admission, the government writes,  
22 "When asked about the Bell 206 helicopter parts, Tamimi said  
23 they were ordered from him by a man named Mohammed," we  
24 redacted the last name, "from a company called Panha. Tamimi  
25 also admitted that Panha is connected to Iran's Air Force. He



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1 then added that he believed that Mohammad is Basij," and we  
2 dropped a footnote explaining what Basig is, which is kind of  
3 an arm of the IRGC, the Islamic Revolutionary Guards Corps.

4 THE COURT: B-I-S-I-G?

5 MR. HALPERIN: I'm sorry. B-A-S-I-J.

6 THE COURT: But his explanation that he just gave  
7 today -- is it Panha?

8 MR. HALPERIN: Panha.

9 THE COURT: That that is the provider for the Red  
10 Crescent.

11 MR. HALPERIN: And again, we think that that  
12 representation that he made today is false, is a lie, because  
13 he never said that in the postarrest interviews to the F.B.I.

14 I'd also point the Court to page four of the  
15 government's submission, paragraph two, where during the  
16 investigation there was a recording in which Tamimi, on  
17 November 15, 2011, reading from page four of our initial  
18 submission, paragraph two: "On November 15, 2011, Tamimi told  
19 individual one that he," meaning Tamimi, "had just met with  
20 Iranian Air Force personnel and that they were interested in  
21 individual one's parts and would submit a parts list."

22 I think based on all these points and pieces of  
23 evidence, the Court can certainly find by a preponderance that  
24 Tamimi attempted to acquire these goods for the Iranian Air  
25 Force.

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1           Sorry, your Honor. Could I just have a moment?

2           THE COURT: Sure.

3           MR. HALPERIN: I don't know if the Court wants to hear  
4 more on that or if I should proceed to the sentencing  
5 arguments. Whatever the Court's preference is.

6           THE COURT: Why don't you go ahead and do the  
7 sentencing arguments and I'll give you a chance to respond.

8           MR. HALPERIN: Your Honor, we've submitted nearly 40  
9 pages in advance of sentencing, so we're certainly not going to  
10 repeat many of the points and I'll just say a few words. In  
11 this case, the government believes that a guideline range is  
12 very appropriate. The offense conduct was serious and  
13 significant and undermined and jeopardized the national  
14 security of this country. We certainly agree that, as the  
15 Court has now found, the base offense level is entirely  
16 appropriate since presidents of both parties have found Iran to  
17 constitute a threat to our country's national security, and  
18 that's why these various executive orders and the sanctions  
19 have been put in place.

20           As we said, Judge, we think it is an important point  
21 in terms of the Court's consideration of the 3553(a) factors,  
22 the nature and circumstances of the offense, that Mr. Tamimi  
23 was trying to acquire these goods for the Iranian Air Force.  
24 He said that during the investigation, and he said it after his  
25 arrest. The fact that it was for the military makes the

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1 offense that much more serious.

2 Now, your Honor, we believe that he's lied to the  
3 Court on two occasions about this absurd story that he was  
4 trying to acquire the goods for the Red Crescent. He never  
5 said that during the course of the investigation or in the  
6 postarrest interviews. I think it's important for the Court to  
7 consider Tamimi 's role in the conspiracy, which was vital in  
8 this case. He was the one who enlisted the shippers in South  
9 Korea. He identified them, he then recruited them and brought  
10 them into the conspiracy saying that he had worked with them  
11 before and that he knew that one of them, who was based in  
12 South Korea, would charge more for sensitive items in violation  
13 of the sanctions against Iran.

14 He and the coconspirators talked about how they would  
15 falsify shipping labels to evade customs from the United States  
16 and South Korea. They talked about how they would hide the  
17 ultimate destination of the goods on the packages, so the  
18 evidence shows that Tamimi had an international network of  
19 criminal associates that he could call on, which he did in this  
20 case.

21 Your Honor, we do believe deterrence is a vital  
22 Section 3553(a) factor in this case. A guidelines range  
23 sentence would emphasize that conduct designed to evade the  
24 United States sanctions on Iran will not be tolerated no matter  
25 who commits the crime and no matter where in the world they're

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1 located. I think what you heard, the final point here, Judge,  
2 what you heard from Mr. Tamimi today was a real lack of  
3 remorse. Excuses, a new 11th-hour claim of entrapment and a  
4 discussion about Bell helicopters and how he just told the  
5 Court, and obviously I don't have the official transcript in  
6 front of me, that no Bell helicopters had been sold to Iran for  
7 40 years. I think the Court should respectfully ask itself how  
8 Mr. Tamimi would know that, how does he have such a clear  
9 knowledge of what the Iranian government has imported from the  
10 United States as it relates to Bell helicopters. I think that  
11 only underscores our argument that this defendant before this  
12 Court has connections, strong connections, to the Iranian  
13 government, to the Iranian Air Force, that he would even know  
14 and be able to describe to the Court in his view the history of  
15 Iran's imports or lack thereof of these Bell 206 helicopter  
16 components.

17 Your Honor, for all these reasons, we strongly request  
18 that the Court sentence Mr. Tamimi to a sentence within the  
19 guidelines range of 46 to 57 months. Thank you.

20 THE COURT: Thank you. Mr. Amini, is there anything  
21 you would to respond to?

22 MR. AMINI: Your Honor, the Department of Justice, as  
23 I provided in Exhibit F of my initial filing, lists all the  
24 citations of similar kind. And today, Mr. Tamimi was made a  
25 big player. Department of Justice about this case is a blurb,

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1 is only a couple of lines, included in another case. It's not  
2 even standing on its own. For some reason, this case has been  
3 blown out of proportion. Your Honor, Mr. Tamimi never lied in  
4 the investigation at the beginning or never lied in court. He  
5 said these parts for this repair company called Panha, Panha  
6 repairs all the helicopters. The helicopter parts he was going  
7 to be sending was for Red Crescent. Red Crescent are the  
8 owner, Red Crescent is the owner of these helicopters, which he  
9 was going to get the parts, but it was going to be repaired in  
10 the shop, which is owned by, either partially or fully by the  
11 government. But there's a Web site. If your Honor allow me,  
12 he told me there's a Web site, I will link the Web site so we  
13 can see what the Panha is. He admitted the part was for Panha,  
14 but he never admitted at any time who was the owner of these  
15 helicopters or these parts for.

16 THE COURT: What about his admission that this person  
17 named Mohammed is Basig?

18 MR. AMINI: Your Honor, I haven't seen the transcript.  
19 I don't know what the government is relying on. There is a  
20 Farsi translation. I would like to go into looking at the  
21 tapes and see what they're talking about, what discussion, and  
22 we will get the Farsi and translate it to see what he has said.

23 THE COURT: You may continue.

24 MR. AMINI: Your Honor, Mr. Tamimi said the items  
25 which government never gave the list to the Court, we don't

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1 know what items, what component actually they're talking about.  
2 They never mentioned that. They just say component. We don't  
3 know the type of the component. Mr. Tamimi today testified  
4 they are for bolts, bearings, and the washers, and this is not  
5 really mentioned by government at any part of their  
6 submissions. When they say component, what component? What  
7 was the value of this component? What was it going to be used  
8 for? They make a blanket, global statement that this is going  
9 to harm U.S. safety. They cannot just make that kind of  
10 blanket statement. They need some empirical evidence to  
11 connect the part that they are saying is going to harm the  
12 United States to the part involved. In this case, no such  
13 submission or proffer has been made by the government.

14 THE COURT: Okay.

15 MR. AMINI: Again, I don't know, your Honor. I have,  
16 I can now look at these tape they have given me so I can locate  
17 what the government is talking about. I want to know at this  
18 arrest there was a translator. There's no transcript at this  
19 time, and my client says he never said this was for the Army.  
20 He said for Panha, and I don't know how the government is  
21 taking the Panha and how they translating it to Basig and  
22 getting it to government. Where the Basig was mentioned by my  
23 client? I haven't seen such language.

24 THE COURT: Okay.

25 MR. AMINI: Your Honor, I believe this is a small

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1 case, and the cases that are cited to the Court just yesterday  
2 by the government, your Honor, they are really not similar  
3 cases. They have eight, nine cases they submitted, if I may  
4 just mention that. The case No. 1 they submitted, I wasn't  
5 able to find it in the government listing.

6 The case No. 2, it deals with U.S. person that  
7 actually exported the item, and, your Honor, courts have made a  
8 distinction between actually exporting item and trying to  
9 export for purpose of sentencing.

10 Case No. 3 involved 12 defendants. In addition to  
11 IEEPA, there's also violation of IECA, so it's not just IEEPA,  
12 and also involved export. Your Honor, the case No. 2 involves  
13 \$10 million of the shipment that has already been made. In  
14 this case, there's no allegation even the amount of the  
15 transaction involved. The case No. 3 again is a list of agent  
16 about the case \$168,000 forfeited in that case. When there's a  
17 forfeiture, that means there was a benefit to the company;  
18 there was a transaction involved. In this case, there was no  
19 benefit to the plaintiff. There was no transaction involved.

20 Your Honor, if I may go through all the cases, case  
21 No. 4 and three is the same thing, just repeating twice for two  
22 different defendants.

23 Case No. 5 involves again shipment, they actually  
24 shipped items to Iran. And the person got 30 months in prison,  
25 I believe, on that.

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1           The case No. 6, they have as a military and commercial  
2           aircraft involves \$500,000 of actual shipment and forfeiture.  
3           And they also involved U.S. persons.

4           Case No. 8, they have also involved U.S. person,  
5           actually exported the items, and it was involving the  
6           airplanes, CF65 aircraft engines. Those are not the same kind  
7           of bolt and bearing we are talking about in this case. This is  
8           a low-level, no-money transaction has there ever been taking  
9           place in this case. Mr. Tamimi never paid a penny or put it  
10          over for these items. He just sent his list. The contact from  
11          New York, he was contacting him. He was contacted and asked  
12          for the list and all Tamimi did in this case, just send the  
13          list, and he's being prosecuted. He's in jail for just sending  
14          a list.

15          There's been no proffer. There is no proof my client  
16          works for the Iranian government, he has connection with the  
17          Iranian government. He's just trying to get the part for the  
18          Panha so they can repair the helicopters owned by Red Crescent.  
19          There's no lying here. There's no falsification here, and I  
20          would like to see if the government has anything else.

21          We believe in this case as recommended by the  
22          probation office is one year one day, honestly is more than  
23          enough for this person. I cited the case of the doctor that  
24          was charged with 33 counts in Northern District of California.  
25          33 counts, he pled to one. He actually exported. The court



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1 gave him 36 months' probation and allowed him to go back to  
2 Iran. He did not spend more than ten days in jail, which was  
3 before he posted bond. We have many, many cases of same kind.  
4 They got either six months or they have been released on  
5 probation or maximum they got one year and one day.

6 THE COURT: But many of those involved computer parts,  
7 or things like that, that don't have as clear a military use.

8 MR. AMINI: Your Honor, that's what I'm really trying  
9 to say. The government never gave us the list what the parts  
10 are that they, if they have the bearings, the bolt.

11 THE COURT: Doesn't matter. They're parts for a  
12 helicopter. Everyone agrees on that.

13 MR. AMINI: Your Honor, it makes really big  
14 difference, the technology. Are they trying to transfer the  
15 technology, or these are just the bolt and the bearing? And  
16 it's also for whom. Who is the owner? We are standing here  
17 again and saying the owner of the helicopter that the bearings  
18 was for was Red Crescent, but the repair company is the same  
19 repair company.

20 (Defendant conferred with counsel)

21 MR. AMINI: He's saying I'm swearing this is the case.

22 THE COURT: Okay.

23 MR. AMINI: If your Honor would give us additional  
24 time for briefing, I will review what the government actually  
25 is alleging he had admitted to and we'll get proper translation

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1 of it and brief it to the Court before final sentence.

2 THE COURT: Mr. Halperin.

3 MR. HALPERIN: Judge, again, we don't see any need for  
4 additional briefing. This has been produced in discovery and  
5 counsel's had it for months. Counsel just said Tamimi never  
6 lied in his postarrest interviews, and we agree that he did not  
7 lie by failing to mention, since he never mentioned the Iranian  
8 Red Crescent during his postarrest interviews. We believe he  
9 was being truthful when he talked about how he was acquiring  
10 the parts for an official connected with the Iranian Air Force.

11 I'd also point out, as I said a few minutes ago, the  
12 proof of this point that he was trying to acquire the materials  
13 for the Air Force is not limited to his postarrest interviews.  
14 It's also in at least two different recorded conversations as  
15 we set forth on page four and page six of our sentencing  
16 submission.

17 No. 1, in paragraph two, on page four, "On November  
18 15, 2011, Tamimi said that he had just met with Air Force  
19 personnel and that they were interested in individual one's  
20 parts and would submit a parts list."

21 No. 2, on page 6, paragraph 11, "On March 7, 2012,  
22 Tamimi told individual one that one of the coconspirators was  
23 with Tamimi in his office in Tehran, and Tamimi said he had  
24 just told that coconspirator that the goods were for the  
25 military but that on the carton it did not reveal that the

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1 goods were for the military," again, showing the falsification  
2 of the documents.

3 Finally, in terms of probation's recommendation, we  
4 vigorously but respectfully disagree with probation's  
5 recommendation in this case of a year and a day. We would note  
6 that the only 3553(a) factor that probation even discussed in  
7 their justification was the supposed family circumstances of  
8 the defendant. That is one small factor that ignores the  
9 nature and circumstance of the offense, the need to impose just  
10 punishment, and, of course, the need for deterrence. And, as  
11 we said in our submission, assuming arguendo that the claims  
12 about the family situation are true, these are hardly egregious  
13 or extremely tragic family circumstances that would justify an  
14 enormous departure from the guideline range.

15 We submit that when balancing as to everything else a  
16 guideline range sentence is entirely appropriate in this case.  
17 Thank you, your Honor.

18 THE COURT: Thank you. Did you want to add something  
19 else before we take a brief recess?

20 MR. AMINI: Your Honor, not mentioning Red Crescent in  
21 his interview, that doesn't mean he lied. If he was not asked,  
22 then he did not say, that is not a lie. The government is  
23 making argument that he lied, he did not say. If he was not  
24 asked and he did not say this is for Red Crescent, that is not  
25 a lie. If he actually said for Iranian Air Force, then he

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1 changes his mind, then that is a lie. He never said this is  
2 for the Iranian Air Force, and, your Honor, I have all these  
3 CDs and DVDs, a couple of them they just cited. Honestly, I  
4 have 16 of them. I've reviewed them.

5 I want to have opportunity to go back and get actual  
6 translation of those calls for those two days with the  
7 affidavit submitted to actually show what was mentioned because  
8 I want to make sure the translation was done properly. They  
9 are relying on two telephone calls and saying he admitted to  
10 the Air Force. I want to make sure that admission is here,  
11 your Honor, before you impose the sentence, because that is  
12 critical, and I do have it. I just have to go and look, and we  
13 get affidavit filed with the actual translation so your Honor  
14 know what was that telephone call all about, or the government  
15 can show it to today in the court so we see what was the  
16 admission.

17 THE COURT: I'm going to take a five-minute recess.

18 (Recess)

19 THE COURT: I'm going to postpone the ultimate  
20 sentencing decision because I would like to at least see some  
21 of the evidence on these issues. If I could focus on a couple  
22 of issues, I mean, the main issue I have is I want to learn  
23 more about what his purpose was in entering into this  
24 conspiracy. Was it really for Red Crescent, was it for a  
25 military connected or government organization, and the specific

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1 things I'm thinking about are the comment about Mohammad is  
2 Basij, the question about Panha and anything about whether that  
3 might be connected to the Red Crescent, and then, most  
4 basically, any statements tending to show that he knew or  
5 understood that these were for the military or for the  
6 government. What I have in mind is I would like to see, for  
7 example, F.B.I. 302 reports, the various things that are  
8 highlighted in the brief, so that I have some understanding of  
9 that.

10 MR. HALPERIN: Your Honor, that certainly makes sense,  
11 and we were speaking to the agents during the break and they  
12 were saying that by Tuesday, we could have, we've already  
13 produced and prepared, I guess, official F.B.I. summaries of  
14 two calls in issue, November 15, '11, and March 7, 2012, but by  
15 probably the end of the day Monday, early Tuesday, we can have  
16 official verbatim transcripts of those calls produced to the  
17 Court and defense counsel, along with the recording which has  
18 already been produced to defense counsel probably close to a  
19 year ago in discovery, but we will produce those as well.

20 THE COURT: When you say recordings, those are of  
21 interviews?

22 MR. HALPERIN: No, your Honor. I'm sorry. We have  
23 recordings of the actual conversations from November 2011 and  
24 March 2012.

25 THE COURT: So we'll be able to get actual

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1 transcripts?

2 MR. HALPERIN: Yes, because they're in Farsi.

3 THE COURT: And the four days of interviews were not  
4 recorded, were they?

5 MR. HALPERIN: Correct. They were not recorded. We  
6 have F.B.I. 302s that we can produce to the Court. I guess  
7 what we'd ask in the first instance, before setting an  
8 official, full-blown Fatico hearing is if the government, by,  
9 let's say, next Tuesday can produce those things that the Court  
10 has asked for to the Court and defense counsel, including the  
11 underlying recordings of those two key conversations, that may  
12 satisfy everyone's concerns on these points.

13 THE COURT: Mr. Amini.

14 MR. AMINI: Your Honor, just getting an affidavit from  
15 Panha or from Red Crescent that was their helicopters or they  
16 owned helicopters, is that something the Court would entertain?  
17 Is the U.S. interested in Tehran, they own the helicopters,  
18 they can list what they had and the repair shop in Panha.

19 MR. HALPERIN: Your Honor, based on our conversations  
20 with the agents, I don't think we dispute that Panha may also  
21 provide materials to the Red Crescent, so I don't see what  
22 purpose that has.

23 THE COURT: What is Panha, what type of entity?

24 MR. AMINI: It's just a repair shop, your Honor, a  
25 repair shop for helicopters, but actually, I don't know if it's

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1 privately owned. They have a Web site and I can get the link  
2 and I can also in briefing, therefore, provide to the Court so  
3 the Court can see what kind of organization they are. But I  
4 heard from the defendant it's an arm of the Air Force, but  
5 actually it is a repair shop where all the even private  
6 helicopters because there is no other shop for helicopters to  
7 repair.

8 THE COURT: You don't need to get an affidavit. If  
9 there's something on the Web site or something like that,  
10 that's fine.

11 Ms. Surratt.

12 MS. SURRATT: I was going to chime in some information  
13 we know about Panha, but unless the Court wants to hear it now,  
14 we can address it later.

15 THE COURT: You can address it later. In terms of  
16 timing, you said you can submit something next week?

17 MR. HALPERIN: By next Tuesday, your Honor.

18 THE COURT: Would you be able to respond the following  
19 week?

20 MR. AMINI: Yes, your Honor. Seven to ten days.

21 THE COURT: Whenever you receive the government's  
22 submission, is a week enough, or do you want to have ten days  
23 for that?

24 MR. AMINI: I just don't know my schedule right now,  
25 your Honor. I'm saying ten days, if I can submit something in

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1 four days, I will do so.

2 THE COURT: At that point, I guess we'll need to  
3 schedule, we should schedule a further date for sentencing,  
4 since I'm postponing it. How much time do you think? Should  
5 we do it in three weeks, or so?

6 MR. HALPERIN: I'd say no more than three weeks, your  
7 Honor.

8 THE COURT: Is that okay?

9 MR. AMINI: Yes, your Honor. I have oral argument in  
10 Ohio end of November. I just want to make sure it's not that  
11 day.

12 THE DEPUTY CLERK: November 25.

13 MR. AMINI: November 22.

14 THE COURT: That's your argument?

15 MR. AMINI: No. That day is open. Mine is 25th, your  
16 Honor.

17 THE COURT: How about the 15th?

18 MR. HALPERIN: That works for the government, your  
19 Honor.

20 MR. AMINI: 15th.

21 MR. HALPERIN: Judge, we'd request, if at all  
22 possible, we do a Friday closer to the morning or middle of the  
23 day rather than late afternoon.

24 THE COURT: Could we do 9:30 on the 15th?

25 MR. AMINI: 9:30.



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1 THE COURT: Is that possible?

2 MR. HALPERIN: That works for the government, your  
3 Honor.

4 THE COURT: We'll schedule it for 9:30 on the 15th.  
5 I'll look at the submissions and then I guess I'll tell the  
6 parties in a notice or an order whether I would like to hear  
7 any live testimony. I may not, based on what's submitted, but  
8 if I do, I'll let the parties know.

9 MR. AMINI: Okay.

10 THE COURT: Is that okay?

11 MR. HALPERIN: That works.

12 THE COURT: Sentencing is adjourned to November 15,  
13 2013, at 9:30 a.m.

14 Anything else for today?

15 MR. HALPERIN: Not from the government, your Honor.

16 MR. AMINI: Thank you, your Honor.

17 THE COURT: Thank you.

18 (Adjourned)

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